

ORDERS IN COUNCIL

[81]

With respect to the application made by Messrs. Ewing, Treadgold and Barwick to divert water for mining purposes.

1. Order in Council dated 12th day of June, 1901.
2. Ordinance dated 12th day of June, 1901.
3. Order in Council dated 29th day of June, 1901.
4. Order in Council dated 7th day of December, 1901.

1.

AT THE GOVERNMENT HOUSE AT OTTAWA,

THE 12TH DAY OF JUNE, 1901.

Present :

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

Whereas application has been made by Malcolm H. Orr Ewing, of Malvern, England, A. N. C. Treadgold, of London, England, and Walter Barwick, of Toronto, Ontario, under date the 31st May, 1901, with regard to the establishment of hydraulic works to supply water for the efficient working of auriferous deposits, now unworked for the want of a sufficient water supply, in the Klondike District in the Yukon Territory, and for other purposes mentioned in such application, hereto annexed ; and

Whereas the details of different schemes submitted have been considered and discussed ; and

Whereas the mining now carried on in the Klondike District is, because of the inadequate supply of water necessarily confined to the washing of the richest gravel only, comparatively small in area, thus leaving large tracts of gold-bearing gravels unworked ; and from the information obtained from the Gold Commissioner of the Yukon Territory and others it is believed that the riches of the Klondike District can only be properly utilized by such a water supply as that which the before-mentioned applicants are prepared to establish ;

Therefore the Governor General in Council is pleased to order and doth hereby order that the said application by the said Malcolm H. Orr Ewing, A. N. C. Treadgold and Walter Barwick, bearing date the 31st May, 1901, a copy of which is hereto annexed, and which is hereby made a part of this Order in Council, shall be and the same is hereby accepted ; and that the said parties shall be and are hereby granted all and every of the powers, privileges, rights and franchises asked for and mentioned in such application upon the terms and subject to the conditions and regulations therein

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set forth and also to the provisions of an Ordinance necessary to carry into effect the provisions hereof, and which said Ordinance the Governor General in Council is hereby pleased to declare his intention to enact.

JOHN J. McGEE,

Clerk of the Privy Council.

OTTAWA, Ont, May 31st, 1901.

To the Honourable

The Minister of the Interior.

The applicants are prepared to undertake the establishment of hydraulic works which will supply water to the auriferous deposits now without water in certain parts of the Klondike District, provided the following rights are granted to them subject to the general condition that nothing contained in this grant shall interfere with the right to water to which any free miner is entitled on Bonanza, Bear and Hunker Creeks and their tributaries for the working of his claim under the regulations now in force governing placer mining and the diversion of water in the Yukon Territory:—

1. The sole right to divert and take water from the Klondike River at any point or points between its entry into the Yukon River and Flat Creek for the purpose of generating power with which to pump water to work the auriferous deposits in the district (hereinafter termed "The District") comprising the beds, banks, valleys, slopes and hills of the Klondike River, of Bonanza, Bear and Hunker Creeks and of their tributaries.

Provided that licensed holders of mining locations situated on the Klondike River shall be entitled as against the grantees to the use free from toll of a flow of water sufficient for working their claims but not exceeding in all three thousand five hundred (3,500) miner's inches, equal to five thousand two hundred and fifty (5,250) cubic feet per minute.

Provided further, that in the event of the grantees interfering with the flow of the Klondike River by the erection of dams or other obstructions or by diversion of its water to such an extent as to prevent the passage of saw-logs or other timber down the stream, then the grantees shall for holders of timber berths under license from the Dominion Government, provide slides and facilities free of charge for the transmission of such logs and timber over such dams and obstructions and over the portion of the river affected by such diversion of water.

2. The prior right subject to the provisoes contained in clause 1 to divert and take water from the Klondike River for distribution and use in The District, especially upon the hills and benches.

3. The right on any creek or tributary within The District to divert, take, impound and store for mining purposes any water not used by any free miner for the working of his claim on such creek or tributary under the regulations now in force for placer mining or respecting the diversion of water for mining purposes in the Yukon Territory.

4. The right at any point or points in the bed, banks, valley, slopes and hills of the Klondike River between its mouth and Flat Creek to construct and maintain dams, cribs, intakes, flumes and any other works necessary for the generation of power and the right of entry upon and way through any lands and any mining ground for the purpose of such construction and maintenance.

Provided that the grantees shall place in a separate dump for the use of the owners of any mining ground entered upon by them in the exercise of this right, all gravel which they may be obliged to move in such mining ground in consequence of the exercise of such right.

5. The right to purchase any Crown lands required by the grantees for the purposes of their works at a price not exceeding ten dollars per acre, saving and reserving all the timber, mines and minerals upon or under such lands.

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6. The right at any point or points in The District to build, maintain and operate pumping stations, electrical works and reservoirs.

7. The right of entry upon and way through any lands and any mining ground for the purpose of constructing, laying and maintaining flumes, ditches and pipe lines for conveying the grantees' water supply to any point within the district.

Provided that the grantees shall place in a separate dump for the use of the owners of any mining ground entered upon by them in the exercise of this right, all gravel which they may be obliged to move in such mining ground in consequence of the exercise of such right.

8. The right of entry upon and way through any lands and any mining ground within the district and within the Indian River district for the purpose of constructing and maintaining overhead or underground wires and any other structures for the transmission of electricity for any purpose whatsoever throughout the said districts, and the right to levy and collect such tolls as may be approved by the Governor General in Council for the use of electricity in the said districts.

Provided that the grantees shall place in a separate dump for the use of the owners of any mining ground entered upon by them in the exercise of this right, all gravel which they may be obliged to move in such mining ground in consequence of the exercise of such right.

9. The right, subject to the regulations hereinafter contained to use, distribute and dispose of the water delivered by the grantees within the district.

10. The right, subject to no payment except the royalty prescribed upon output, to enter upon, make entry for and work all mining locations now or hereafter abandoned on Bonanza, Bear and Hunker Creeks and their tributaries.

11. The prior right, if mineral-bearing lodes or deposits of any kind whatever be discovered through the operations of the grantees upon Crown lands, or upon lands or locations owned or leased by the grantees within the district, to enter upon and purchase locations embracing the discoveries in the manner prescribed by the regulations governing mining in the Yukon Territory.

12. The right to take from Crown lands, to be designated by the Department subject to the payment of Crown timber dues, all timber and materials needed for the construction, maintenance and operation of the grantees' works.

13. The exclusive right, subject to the regulations hereinafter contained, to construct, lay, maintain, supply with water and operate bed-rock flumes, and any other flumes for supplying water in the district; provided that every free miner shall have the right of constructing flumes for the purpose of conveying to his claim the lawful amount of water to which he is entitled under the regulations now in force for placer mining in the Yukon Territory, and any water that he shall purchase from the grantees; and he shall also have the right of constructing flumes for the purpose of draining his claim.

This grant is subject to the following conditions:—

1. The grantees shall before December 31, 1902, have expended upon the objects of their enterprise at least the sum of two hundred and fifty thousand dollars (\$250,000). Details of such expenditure shall be presented to the Governor in Council. If the grantees fail to comply with this condition the exclusive and prior rights granted to them shall cease and be determined.

2. The grantees shall deliver within the district during the summer season of 1905, not later than July 1, 1905, a flow of one thousand (1,000) miner's inches, equal to fifteen hundred (1,500) cubic feet per minute. Such flow shall be continuously maintained and be available during at least sixty (60) days of such season, and each season thereafter during the period for which this franchise is granted, as set forth in condition 7 hereof, and in default thereof the exclusive and prior rights of the grantees shall cease and be determined. In case of unavoidable accident to the works of the grantees they shall be entitled, without forfeiture, to a reasonable time for effecting repairs.

3. The grantees shall supply water to the owners of claims within the district subject to the regulations hereinafter contained. Should the above supply prove insufficient to meet the applications of free miners, then the grantees may at their option at any time

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increase such supply and may be required upon two years' notice, terminating with August 31 in any year, to deliver within the district an additional quantity not exceeding five hundred (500) miner's inches of water, equal to seven hundred and fifty (750) cubic feet per minute, provided that the grantees shall not be required to commence the works for such additional quantity unless and until they shall have earned a *net profit* of at least ten per cent (10 p.c.) per annum for the three previous consecutive years upon the capital stock of the company which they shall organize for carrying this grant into effect. If the grantees fail to comply with such requirement the exclusive and prior rights granted to them shall cease and be determined.

Provided, however, that if the grantees shall be delayed or their operations interfered with by floods, war civil commotions, strikes, accidents to machinery or works, or by the act of God or other causes over which the grantees have no control and so prevented from complying with the conditions of this clause, they shall be entitled to extensions of time equal to the periods of delay.

4. The grantees shall not be required to pay to the Crown or to the district or local authorities any rentals, occupation rents, assessments or other dues in respect of any lands except timber lands, or in respect of any flumes, drains, properties or profits other than import customs duties, school taxes and a royalty on the gold mined in the mines owned by them, or any tax or assessment which may be substituted for such royalty.

Provided that no other or higher royalty, or any tax or assessment which may be substituted for such royalty, shall be imposed on any gold or silver mined from quartz by the grantees, than that prescribed by the present regulations, nor shall it at any particular time be greater than the lowest royalty imposed on the output of gold and silver from the quartz mines of other miners in the Yukon District.

Provided also that no other or higher royalty or any tax or assessment which may be substituted for such royalty shall be imposed on any gold and silver mined from placer mines by the grantees than that prescribed by the present regulations, nor shall it at any particular time be greater than the lowest royalty imposed on the output of gold and silver from the placer mines of other mine owners in the Yukon District.

5. The properties of the grantees shall be exempt from representation.

6. Proper powers shall be granted by ordinance to the territorial court to enable the grantees to exercise the rights conferred upon them and to protect the interests of private owners by compensation for any actual damage sustained by them in consequence of the exercise of such rights.

7. The rights conferred upon the grantees shall extend for the period of thirty years, at the expiration of which period all exclusive and prior rights granted to them shall cease and be determined, but the works and structures built by the grantees, together with the lands, rights and easements which they shall have purchased and acquired shall remain the grantees' private property.

8. The grantees shall have the right to assign the rights conferred upon them to any company or companies or to any persons associated together for the purpose of carrying into effect the objects of the grant or any part of them.

REGULATIONS.

"A." The grantees shall allow all free miners within the district to tail their sluices, hydraulics, ground sluices and drains free of charge into the flumes and drains of the grantees, yet not in such a way as to damage or obstruct the free working of the flumes and drains of the grantees by rocks, stones, boulders or otherwise.

"B." The grantees shall compensate the owner of any mining claim or lands for any damage which any such owner may sustain by reason of any of the grantees' works breaking or being imperfect.

"C." Any question of compensation arising under this grant shall be determined judicially by the Gold Commissioner, subject to appeal to the territorial court of the district, and the said court may upon special circumstances being shown make an order for the taking of further evidence.

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“D.” The grantees shall yield to the owners of claims entered upon by them for the purpose of carrying out any of the works contemplated by this grant, any gold which they may obtain in respect of any gravel which may be moved by them in such claims in consequence of the construction of such works.

“E.” Subject to the provisions hereinafter contained, the owners of claims within the district shall be entitled to purchase one-half of the water delivered in the district by the grantees.

Any owner of a claim so desiring to purchase a supply of water from the grantees shall between the first day of January and the fifteenth day of March in each year deliver to the grantees' agent at Dawson named for the purpose, a notice stating the amount of water required by the said owner for the purpose of working his claim during the approaching season.

The grantees shall allot the amount of water to be distributed during the approaching season among such owners, and the certificate of such allotment shall be filed by the grantees in the office of the Gold Commissioner on or before the fifteenth day of April in each year.

The grantees shall, in supplying water to claim owners applying for the same be bound to observe a fair proportion between such owners. In determining what is such fair proportion regard shall be had among other considerations to the size of the several claims and dumps to be washed and to the most economical use of the water within the district.

The Gold Commissioner shall have jurisdiction to hear and determine judicially all matters in difference in regard to the grantees' allotment of such water as set forth in the said certificates.

The grantees shall not be bound to construct supply pipes or flumes or other works leading to the claims of applicants.

“F.” The charge which the grantees shall be entitled to make for the use of such water on each claim shall not exceed one dollar per miner's inch per hour.

MALCOLM H. ORR EWING,
Malvern, England.

A. N. C. TREADGOLD,
London, England.

WALTER BARWICK,
Toronto.

2.

AT THE GOVERNMENT HOUSE AT OTTAWA,

THE 12TH DAY OF JUNE, 1901.

Present :

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL.

ORDINANCE.

Whereas by Order of the Governor in Council bearing date the twelfth day of June, 1901, certain powers, privileges, rights and franchises were granted to Malcolm H. Orr Ewing, A. N. C. Treadgold and Walter Barwick, hereinafter called the grantees, upon the terms and conditions therein set forth ;

And whereas by the said Order in Council it was provided that the necessary ordinance be passed, issued and enacted to carry into effect the provisions of the Order in Council, and it is expedient to pass this Ordinance ;

Be it therefore enacted :

1. Whenever the grantees shall desire to construct, lay or maintain flumes, ditches or pipe lines for conveying water, or to construct and maintain overhead or underground wires, cables, conduits or other structures, including posts, piers or abutments for sustaining the cords, cables or wires of such lines for the transmission of electricity, such grantees shall have power and authority, subject to the liabilities and restrictions hereinafter expressed—

(a) To cause such examination and surveys to be made and levels to be taken as may be necessary to the selection of the most advantageous routes for the said works and for such purposes by their officers, engineers, surveyors, agents and servants to enter upon and take possession of the lands and waters of His Majesty and of any person, but subject to liability for any damages which they shall do thereto.

(b) To receive, take and hold such grants and donations of real estate and other property as shall be made to them, to aid in the construction, maintenance and accommodation of such works or any of them.

(c) To purchase, hold and take and by grants and donations to receive and take, and by their officers, engineers, surveyors, agents and servants to enter or acquire any easement upon or to take possession of and use, all such lands or other property as may be necessary for the construction, maintenance and operation of the said works or any of them and other accommodations necessary to accomplish the objects of the grantees, but not until the compensation to be made therefor as agreed upon by the parties as ascertained to be made as hereinafter prescribed shall have been paid to the owner or owners thereof or deposited as hereinafter directed, or the consent of such owner or owners to be given to enter into possession.

(d) To alienate, sell or otherwise dispose of any such lands or other property.

(e) To take and appropriate for the use of their works but not to alienate so much of the wild lands of the Crown as may be necessary for their said works and as may not have been granted or sold, as also so much of the public beach or of the land covered with the water of any lake, river or stream or of their respective beds as is necessary for making and completing and using their said works.

(f) To lay, locate and lay out and to construct, maintain and operate the said works or any of them and the grantees shall have the right to enter upon any lands by their officers and agents without hindrance for the purpose of constructing said works or any of them and for inspecting, operating and repairing the same.

(g) To construct said works or any of them over, across, along or under any stream of water, watercourse, road, highway or railroad which the route thereof shall intersect, but so as not to interfere with the free use of the same and in such manner as to afford security for life or property, and wherever the Gold Commissioner shall so direct, such works or any of them may be constructed and laid along the right of way of any road or highway, but in all cases where any such works shall be constructed across, upon or along any road or highway thus intersected the grantees shall immediately upon the construction of any such works restore said road or highway to its former state or in a sufficient manner not to have impaired its usefulness or injured the franchises of the grantees.

(h) To purchase or acquire easements in, over and upon lands, and the grantees may change the line of their works or any of them whenever they shall so determine.

2. Whenever the grantees are unable to agree with the owner or owners for the purchase of any real estate required for the construction of the said works, or any of them, the grantees shall have the right to acquire an easement in and upon the said real estate in the manner and by the special proceedings prescribed in this ordinance.

3. The grantees are hereby authorized to enter upon any land for the purpose of examining and surveying the line of any such works and may acquire an easement in, over and upon so much thereof as may be necessary for any such works.

4. The grantees shall deposit with the Clerk of the Territorial Court a description of the rights and interests intended to be appropriated, and an easement in such land shall belong to the grantees to use for the purpose specified, by making or tendering payment as hereinafter provided.

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5. The grantees may purchase any lands, right of way, easement or interest therein from the owner of such lands, or in case the same is owned by a person insane or infant, at the price to be agreed upon by the regularly constituted guardian of such insane person or infant, if the same shall be approved by the said court; and on such agreement and approval the owner or guardian, as the case may be, shall convey the lands, easement or right of way upon the said premises so purchased to the grantees and the deed when made shall be valid.

6. If the grantees shall not agree with the owner of the land or with his guardian, if the owner is incapable of contracting, touching the value of such lands, easement or right or damages sustained by such owner, the grantees shall deliver to such owner or guardian a notice containing:

(a) A description of the land to be taken or of the powers intended to be exercised with regard to any lands, and describing the lands;

(b) A declaration of readiness to pay some certain sum or rent, as the case may be, as compensation for such lands or for such damages;

(c) The name of person to be appointed as the arbitrator of the grantees, if their offer is not accepted;

(d) The name of person representing the grantees upon whom notice may be served, resident in the town of Dawson.

7. If the owner or his guardian, in case such owner is incapable of contracting, is unknown, or is absent from the district, an application for service by advertisement may be made to a judge of the Territorial Court.

8. The application for service by advertisement shall be accompanied by the affidavit of an engineer in the employment of the grantees or of some other person in their employment designated for that purpose, that the opposite party is unknown or is absent from the district or that after diligent inquiry the person on whom the notice ought to be served cannot be ascertained, and the judge shall order a notice as aforesaid to be inserted three times in the course of one month in a newspaper published in the district or in such other manner as the judge shall direct.

9. If within ten days after the service of such notice or within one month after the first publication thereof the opposite party does not give notice to the grantees that he accepts the sum offered by them or does not give notice to them of the name of a person whom he appoints as the arbitrator, the judge shall, on the application of the grantees, appoint a person to be sole arbitrator for determining the compensation to be paid as aforesaid.

10. If the opposite party, within the time aforesaid, give notice to the grantees of the name of his arbitrator, then the two arbitrators shall jointly appoint a third arbitrator, or if they cannot agree upon a third arbitrator, the judge shall on the application of the party or the grantees after notice of at least six clear days having been given to the other party, appoint a third arbitrator.

11. The arbitrators, or the sole arbitrator, as the case may be, shall be sworn before a justice of the peace for the district faithfully and impartially to perform the duties of their or his office, and shall proceed to ascertain such compensation in such way as they or he, or the majority of them, deem best, and the award of such arbitrators, or any two of them, or the sole arbitrator, shall be final and conclusive; but no such award shall be made, nor any official act be done by such majority except at a meeting held at a time and place of which the other arbitrator has had at least two clear days' notice, or to which some meeting at which the third arbitrator was present had been adjourned; and no notice to either of the parties shall be necessary, but each party shall be held sufficiently notified through the arbitrator appointed by him, or whose appointment he required.

12. If by an award of the arbitrators made under this ordinance the sum awarded exceeds the sum offered by the grantees, the costs of the arbitration shall be borne by the grantees; but if otherwise they shall be borne by the opposite party and be deducted from the compensation; and in either case the amount of such costs, if not agreed upon, may be taxed by the judge.

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13. The arbitrators or a majority of them or the sole arbitrator may examine on oath or solemn affirmation the parties or such witnesses as appear before them or him and may administer such oath or affirmation.

14. Any party to an arbitration under this ordinance may, without leave or order, obtain and issue out of the Territorial Court, upon *proecipe*, setting forth the name of the witnesses to be *subpœnaed*, the names of the arbitrators or the sole arbitrator and the place and time of meeting, a *subpœna* commanding the attendance for examination of any witnesses, and also the production of any document to or before the arbitrators or arbitrator, and at the time and place mentioned in such *subpœna*; and the disobedience of such *subpœna* shall be deemed a contempt of court and shall be punishable in the same manner and to the like extent as in the case of *subpœnas* issued in a civil case.

15. The like fees shall be payable for such *subpœnas* as in the case of *subpœnas* issued in civil cases, and the witness shall be entitled to the like conduct money.

16. The arbitrators shall take down in writing the evidence brought before them, unless either party requires that it be taken by means of stenography, in which case a stenographer shall be named by the arbitrators or the sole arbitrator, unless the parties agree upon one, and shall be sworn before the arbitrators or before any one of them or before the sole arbitrator, before entering upon his duties; and the expense of such stenographer, if not determined by agreement between the parties, shall be taxed by the said court or judge and shall, in any case, form part of the costs of the arbitration; and after making their or his award the arbitrators or the sole arbitrator shall forthwith deliver or transmit by registered letter, at the request of either party in writing, the depositions, together with the exhibits referred to therein, and all papers connected with the reference, except the award, to the Clerk of the Territorial Court to be filed with the records of the said court.

17. A majority of the arbitrators, at the first meeting after their appointment, or the sole arbitrator, shall fix a day on or before which the award shall be made; and if the same is not made on or before such day, or some other day to which the time for making it has been prolonged, either by the consent of the parties or by resolution of the arbitrators or sole arbitrator, then the sum offered by the grantees, as aforesaid, shall be the compensation to be paid by the grantees.

18. If the sole arbitrator appointed by the judge, or any arbitrator appointed by the two arbitrators, dies before the award has been made, or is disqualified, or refuses or fails to act within a reasonable time, in the case of the sole arbitrator the judge, upon the application of either party, and upon being satisfied by affidavit or otherwise of such death, disqualification, refusal or failure, may appoint another arbitrator in the place of such sole arbitrator; and in the case of any arbitrator appointed by one of the parties, the grantees and party respectively may each appoint an arbitrator in the place of his arbitrator so deceased or not acting; and in the case of the third arbitrator appointed by the two arbitrators, the provisions of section 10 shall apply; but no recommencement or repetition of the previous proceedings shall be required in any case.

19. After the making of such award the grantees shall pay to said clerk the amount so assessed or tender the same to the party in whose favour the damages are awarded or assessed, and on making payment or tender thereof in such manner it shall be lawful for the grantees to hold the interest in said lands or material so appropriated for the uses as aforesaid.

20. If there are divers or conflicting claimants to the money or any part of it to be paid as compensation for the real estate taken, the said court may direct the money to be paid into the court by the grantees until it can determine who is entitled to the same, and shall direct to whom the same shall be paid and may in its discretion order a reference to ascertain the facts on which said determination and order are to be made.

21. If the grantees have reason to fear any claims or encumbrances, or if any person to whom the compensation or annual rent or any part thereof is payable, refuses to execute the proper conveyance and guarantee, or if the person entitled to claim the same cannot be found, or is unknown to the grantees, or if for any other reason the grantees deem it advisable, the grantees may pay such compensation in the office of the

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clerk of the said court with the interest thereon for six months, and may deliver to such clerk an authentic copy of the conveyance or of the award or agreement, if there is no conveyance; and such award or agreement shall thereafter be deemed to be the title of the grantees to the land therein mentioned.

22. A notice in such form and for such time as the court appoints shall be inserted in a newspaper published in the district which shall state that the title of the grantees, that is the conveyance, agreement or award is under this ordinance, and shall call upon all persons entitled to the lands or any part thereof, or representing or being the husbands of any persons so entitled, to file their claims to the compensation, or any part thereof; and all such claims shall be received and adjudicated upon by the court, and the said proceeding shall forever bar all claims to the lands or any part thereof, including dower, as well as all mortgages or encumbrances upon the same; and the court shall make such order for the distribution, payment or investment of the compensation, and for the securing of the rights of all persons interested, as to right and justice and to the law appertains.

23. The costs of the proceedings, in whole or in part, including the proper allowance to witnesses, shall be paid by the grantees or by any other person, as the court orders; and if such order of distribution is obtained in less than six months from the payment of the compensation into the court, the court shall direct a proportionate part of the interest to be returned to the grantees, and if from any error, fault or neglect of the grantees, it is not obtained until after the six months have expired, the court shall order the grantees to pay to the proper claimants the interest for such further period as is right.

24. The compensation for any lands which may be taken without the consent of the proprietor, shall stand in the stead of such lands; and any claim to or encumbrance upon the said lands, or any portion thereof, shall, as against the grantees, be converted into a claim to the compensation or to a like proportion thereof and the grantees shall be responsible accordingly, whenever they have paid such compensation, or any part thereof, to a person not entitled to receive the same, saving always their recourse against such person.

25. The said court shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this ordinance as may be necessary, or to cause new parties to be added and to direct such further notice to be given to any party in interest as it deems proper.

26. In any case where the notice given improperly describes the land or material intended to be taken or the powers intended to be exercised with regard to any lands, or if the grantees decide not to take the land or material or exercise the powers mentioned in the notice they may abandon the notice and all proceedings thereunder, but shall be liable to the person notified for all damages or costs incurred by him in consequence of such notice, and abandonment—such costs to be taxed in the same manner as costs after an award; and the grantees may give to the same or any other person notice for other land or material or for land and material otherwise described or of the intention to exercise other powers, notwithstanding the abandonment of the former notice.

27. The person offered or appointed as valuator or as sole arbitrator shall not be disqualified because he is professionally employed by either party, or had previously expressed an opinion as to the amount of compensation, or because he is related or of kin to any of the grantees or to any shareholder of any company to which the grantees may assign their rights, if he is not himself personally interested in the amount of compensation; and no cause of disqualification shall be urged against any arbitrator appointed by the judge after his appointment, but the objection shall be made before the appointment and its validity shall be summarily determined by the judge.

28. No cause of disqualification shall be urged against any arbitrator appointed by the grantees or by the opposite party after the appointment of a third arbitrator; and the validity or invalidity of any cause of disqualification urged against any such arbitrator before the appointment of a third arbitrator shall be summarily determined by the judge, on the application of either party, after two clear days' notice to the other, and if the cause is determined to be valid the appointment shall be null and void, and

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the party offering the person so adjudged to be disqualified shall be held not to have appointed an arbitrator.

29. No award shall be invalidated by reason of any want of form or other technical objection, if the requirements of this ordinance have been substantially complied with, and if the award states clearly the sum awarded, and the lands or other property, right or thing for which such sum is to be the compensation; and the person to whom the sum is to be paid need not be named in the award.

2. Whenever the award exceeds four hundred dollars, any party to the arbitration may within one month after receiving a written notice from any of the arbitrators or the sole arbitrator, as the case may be, of the making of the award, appeal therefrom upon any question of law or fact to the Territorial Court; and upon the hearing of the appeal the court shall, if the same is a question of fact, decide the same upon the evidence taken before the arbitrators, as in a case of original jurisdiction.

3. Upon such appeal the practice and proceedings shall be subject to any general rules or orders from time to time made by the Territorial Court in respect to such appeals, which orders may, amongst other things, provide that any such appeal may be heard and determined by a single judge.

4. The right of appeal hereby given shall not affect the existing law or practice in the Territory as to setting aside awards.

30. Upon payment or legal tender of the compensation so awarded or agreed upon, to the person entitled to receive the same, or upon the payment to the said clerk of the amount of such compensation, in the manner herein mentioned, the award or agreement shall vest in the grantees the power forthwith to take possession of the lands, or to exercise the right or to do the thing for which such compensation has been awarded or agreed upon; and if any resistance or forcible opposition is made by any person to their so doing, the judge may, on proof to his satisfaction of such award or agreement, issue his warrant to the sheriff of the district, or to a bailiff, as he deems most suitable, to put down such resistance or opposition, and to put the grantees in possession; and the sheriff or bailiff shall take with him sufficient assistance for such purpose and shall put down such resistance or opposition and shall put the grantees in possession.

31. Such warrant may also be granted by the judge, without such award or agreement, on affidavit to his satisfaction that the immediate possession of the lands, or of the power to do the thing mentioned in the notice, is necessary to carry on some part of the work with which the grantees are ready forthwith to proceed.

32. The judge shall not grant any warrant under the next preceding section unless ten days' previous notice of the time and place when and where the application for such warrant is to be made has been served upon the owner of the land or the person empowered to convey the land or interested in the land sought to be taken, or which may suffer damage from the taking of materials sought to be taken, or the exercise of powers sought to be exercised, or the doing of the thing sought to be done, by the grantees, and unless the grantees give security to the judge's satisfaction by depositing in a chartered bank designated by him, to the credit of the grantees, and such person or party jointly, of a sum larger than his estimate of the probable compensation, and not less than fifty per cent above the amount mentioned in the notice served under section 6.

33. The cost of any such application to, and of any such hearing before the judge, shall be borne by the grantees unless the compensation awarded is not more than the grantees had offered to pay; and no part of such deposit or of any interest thereon shall be repaid, or paid to such grantees, or paid to such owner or party, without an order from the judge, which he may make in accordance with the terms of the award.

34. The court or judge may make any order and direct the issue of any process for the full carrying into effect of any of the provisions of this ordinance.

35. The costs of any proceedings in whole or in part shall be paid by the grantees or by any other person as the court or judge orders.

36. The grantees shall not be entitled to any minerals under any land purchased by them unless the same have been expressly purchased; and all such minerals,

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excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they have been expressly named therein and conveyed thereby.

37. The Order of the Governor in Council of the 12th day of June, 1901, hereinbefore referred to and all rights, powers, privileges and franchises thereby created and conferred are hereby granted, confirmed and declared to be existent, valid and effectual to the same extent and in the same manner as if the several clauses therein were set out and enacted as part of this ordinance.

38. In this ordinance, unless the context otherwise requires—

(a) The expression “grantees” means any company or companies to which the grantees’ rights have been or may be from time to time assigned.

(b) The expression “court” means the territorial court.

(c) The expression “judge” means a judge of the territorial court.

(d) The expression “lands” means the lands the acquiring, taking or using of which is incident to the exercise of the powers given by this ordinance and includes real property, mining locations, messuages, lands, tenements and hereditaments of any tenure.

(e) The expression “owner” or “opposite party” when under the provisions of this ordinance any notice is required to be given to the owner of any lands or when any act is authorized or required to be done with the consent of the owner, means any person who under the provisions of this ordinance would be enabled to sell and convey lands to the grantees.

JOHN J. MCGEE,

Clerk of the Privy Council.

3.

EXTRACT from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 29th June, 1901.

On a memorandum dated June 18, 1901, from the Minister of the Interior, submitting that by an Order in Council dated May 8, 1894, certain regulations were established in regard to advertisements ordered by the Departments, provision was made that accounts for advertising required by the Outside Service were to be rendered, with the orders and marked copies of the publications, to the King’s Printer, and the advertisements were to be measured by him, certified to and transmitted for payment in accordance with the rules which obtain for advertisements issued at the seat of government.

The Minister states that the rules laid down in the Order in Council cannot apply and were never intended to apply to transactions in the Yukon Territory. The said rules have not nor could they have been observed without serious delay in the administration of matters in the Territory.

The minister therefore recommends that the regulations now in force in regard to advertising shall not apply to advertisements ordered at Dawson and that for the purposes of audit a certificate by the Comptroller of the Yukon Territory or other officer by whom the account was examined and approval thereof by the Commissioner of the Yukon Territory shall be deemed sufficient for accounts already paid and those which may be rendered in future.

The Committee submit the same for His Excellency’s approval.

JOHN J. MCGEE,

Clerk of the Privy Council.

4.

• EXTRACT from a Report of the Committee of the Honourable the Privy Council, approved by His Excellency on the 7th December, 1901.

On a report dated November 30, 1901, from the Minister of the Interior, submitting with reference to the Order in Council of June 12, 1901, granting certain rights and franchises to Messrs. Malcolm H. Orr Ewing, A. N. C. Treadgold and Walter Barwick, that the grantees have asked for certain amendments to the Order in Council.

The Minister submits the following amendments to the said order in council:—

Section 3 of said Order in Council is hereby amended by adding thereto the following: In respect of Rock Creek the said right shall be a prior right up to 2,500 miner's inches.

Section 10 of the said Order in Council is hereby rescinded and the following is substituted therefor:

10. The right, subject to no payment except the royalty prescribed upon output, to obtain entry for and work all mining locations now or hereafter abandoned on Bonanza, Bear and Hunker Creeks and their tributaries.

All such locations shall be deemed to be vested in the grantees on the first day of January, 1902, but the grantees shall not receive the entry for any of such locations until they have expended the sum of \$250,000 as herein provided, nor shall they work any of the said locations until the provisions of condition 2, respecting the delivery of two thousand (2,000) miner's inches of water, have been fulfilled. In default of the delivery of 2,000 miner's inches of water as provided in condition 2 the right of the grantees to the said location shall forthwith cease and determine.

Condition 2 under section 13 of the said Order in Council, is hereby repealed and the following substituted therefor:—The grantees shall deliver within the district during the summer season of 1905, not later than July 1, 1905, a flow of water of 2,000 miner's inches, equal to 3,000 cubic feet per minute, for distribution along the line of a conduit constructed from the mouth of Bonanza Valley to Grand Forks, at such an elevation above the Bonanza Creek as will afford a pressure due to an effective head of not less than 300 feet at any and every point throughout the length of such conduit. Such flow shall be continuously maintained and be available during at least sixty days of such season and each season thereafter during the period for which this franchise is granted, as set forth in condition 7 hereof, and in default thereof the exclusive and prior rights of the grantees shall cease and be determined. In case of unavoidable accident to the works of the grantees they shall be entitled without forfeiture to a reasonable time for effecting repairs: provided also that if the grantees shall be delayed or their operations interfered with by floods, war, civil commotion, strikes, accidents to machinery or works, or by the act of God or other causes over which the grantees have no control, and so prevented from complying with the conditions of this clause, they shall be entitled to extensions of time equal to the periods of delay.

Condition 3 of said section 13 is hereby repealed and the following substituted therefor:

3. The grantees shall supply water to the owners of claims within the district subject to the regulations hereinafter contained.

The following shall be inserted in the said Order in Council after said condition 3 as:—

3a. At any time after December 31, 1905, if the grantees have complied with the terms of condition 2, as above set forth, the Minister of the Interior may in respect of any portion of the district, except those portions already by that date served by the grantees' works, require the grantees to elect whether they will proceed with the construction of works to furnish a reasonable supply of water for mining purposes for such portion of the district or abandon in respect thereof their exclusive right to supply water: and if the grantees are not, within six calendar months from the receipt of the notice of such requirement, prepared to proceed with the construction of works calculated to furnish a reasonable supply of water for such portion of the district, then the

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exclusive right of the grantees in respect of such portion of district may be revoked and determined by Order of the Governor in Council.

Regulation "F" in the said Order in Council is hereby repealed and the following substituted therefor:—

"F." The charge which the grantees shall be entitled to make for the use of such water on each placer claim shall not exceed 25 cents per miner's inch per hour.

The following shall be added to the said Order in Council as Regulation "G":—

"G." Whenever the grantees divert and take water on any creek or tributary, any free miner's *bona fide* working claims on such creek or tributary below any point at which the grantees divert and take water on such creek or tributary may collectively require the grantees to leave in such creek or tributary for use in working the claims of such free miners the lawful amount of water naturally flowing in such creek or tributary at the grantees' point of intake, as prescribed by clause 6 of the regulations for the diversion of water in the Yukon Territory, bearing date the third of August, 1898.

The plans of the grantees' works shall be submitted to and approved by the Governor General in Council before the works are actually proceeded with.

The Committee submit the foregoing for His Excellency's approval.

JOHN J. McGEE,

Clerk of the Privy Council.

